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MAR 21 2008
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20 March 2008
by express

Hon. Anne K. Quinlan,
Secretary
Surface Transportation Board
395 E Street, S.W.,
Washington, D.C. 20024

Re: Consolidated Rail Corporation Abandonment
Exemption - in Hudson County, New Jersey
AB 167 (Sub-no. 1189X), and related dockets
AB 55 (Sub-no. 686X) and AB 290 (Sub-no. 306)

Notice of Intent to Participate

Dear Madam Secretary:

This letter is on behalf of City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (hereinafter "City, RTC and Coalition"), and gives notice that City, RTC and Coalition all intend to participate in the above-captioned proceedings. City, RTC and Coalition request prompt service upon the undersigned of all future decisions or reports, as well as all pleadings and correspondence by Conrail or any other party, in these proceedings.

On March 12, Consolidated Rail Corporation ("Conrail") evidently filed a notice with this Board transmitting an "environmental report" ("ER"). That notice states that Conrail intends to file a notice of exemption abandonment proceeding on or about April 7. This Board has placed the notice in the filings portion of its e-library, recording it as a notice to the Board that Conrail intends to initiate an exempt abandonment proceeding in Hudson County in AB 167 (Sub-no. 1189X). Counsel for City, RTC and Coalition learned that Conrail may have made such a filing on March 20.

Upon review of the filing through the STB website for that date, it turns out that the "ER" relates to the Harsimus Branch, the line of railroad involved in City of Jersey City, et al. - Petition for Declaratory Order, F.D. 34818, served August 9, 2007, petition for reconsideration denied by order served Dec. 19, 2007. To make a long story short, Conrail, which unlawfully

has purported to transfer key portions of the Harsimus Branch to a land assembler for non-rail purposes, has petitioned for judicial review of this Board's referenced orders in the D.C. Circuit. Conrail and the land assembler are using this petition for judicial review as a pretext to thwart City's rights in connection with the property in state court proceedings in which the land assembler, with Conrail's support, is seeking in essence to force the City to authorize demolition of the Embankment portion of the Branch and replacement of it with townhouses. Conrail's avid efforts to transfer a line of railroad subject to this Board's jurisdiction to a developer, and in complicity with same, to destroy said line, all without any prior authorization from this agency, and in the face of intense public interest in preserving the line, are astonishing.

Conrail's March 12 filing does not reference or address Jersey City Mayor Healy's letter to Conrail, dated March 4, noting the City's profound and important interest in the Harsimus Branch, as well as the City's concern with the processes Conrail is using to thwart the City's interest. A copy of that letter is attached hereto.

As Mayor Healy indicates in his letter, due to the intense public interest in preserving this line, and the controversy surrounding it, City intends to object to use of notice of exemption procedures, and to seek other appropriate relief should Conrail in fact not only purport to initiate a fast-track abandonment proceeding but also to do so in the abbreviated time-frame it projects. RTC and Coalition join in these sentiments. As City, RTC and Coalition intend to show in future filings, Conrail has been flaunting, is flaunting, and continues to flaunt section 106 of the National Historic Preservation Act, and, as we further intend to show, is engaging directly or in league with a "land assembler" in illegal anticipatory demolition. In addition, Conrail has been actively seeking to frustrate and circumvent the public interest in preserving the Branch for rail transportation and other public purposes.

By my signature below, I certify service by U.S. Mail, postage pre-paid, first class (priority), on the date above upon John K. Enright, Associate General Counsel, Conrail, 1000 Howard Blvd., Mt. Laurel, NJ 08054.

Respectfully submitted,


Charles H. Montange
for City, RTC and Coalition

Att. (Letter from Mayor Healy to Conrail)
cc. Mr. Enright, Conrail
City of Jersey City, RTC, and Coalition
Section of Environmental Analysis, STB
(all w/att.)

CITY OF JERSEY CITY

JERRAMIAH T HEALY
MAYOR



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March 4, 2008

John K. Enright
Associate General Counsel
Consolidated Rail Corporation
1000 Howard Boulevard
Mt. Laurel, NJ 08054

**Re: Abandonment Proposal - Jersey City, NJ
Harsimus Branch - Mile Post 0.0 to 1.36
Hudson Street Industrial Track - Mile Post 0.0 to 0.72**

Dear Mr. Enright:

We are in receipt of your letter dated February 7, 2008, informing the City of Jersey City that Conrail is proposing to abandon the above referenced railroad properties pursuant to a proceeding before the Surface Transportation Board (STB) and seeking the City's comments on environmental issues and compatibility with City plans. Your letter indicates that this matter will be docketed as STB No. AB 167 (Sub-No. 1189X).

With regard to the Hudson Industrial Track, we will show that it is already in use for alternative transportation means.

With regard to the Harsimus Branch, we will show that it is completely undeveloped and provides an obvious future transportation corridor; that it can be used for alternative transportation and recreation uses; that it provides an invaluable lesson about our city's industrial past and role in building our nation's wealth, and that there are serious process concerns, such as 106 review, that are seemingly being ignored by Conrail

Please be advised that, pursuant to NJSA 48:125 l., the City of Jersey City intends to acquire this property by purchase or condemnation. (A copy of that Ordinance is attached)

Hudson Street Industrial Track

All of the former railroad right-of-way which you reference as Hudson Street Industrial Track is now used for city streets (Columbus Drive, Hudson Street, Essex Street, Washington Street). In addition, a significant portion of the Hudson Street Industrial Track right-of-way is now used for the Hudson-Bergen Light Rail system.

The light rail, which started carrying passengers in April 2000, has been a vital component of our transportation system. Light rail (and the PATH subway) has allowed Jersey City to develop over 15 million square feet of office space and over 15,000 apartments in the two square miles of our Downtown Financial District without adding a single lane of highway. It is unthinkable to imagine this scale of development without the light rail system. Because the Hudson Street Industrial Track right of way is no longer needed to serve industry, and because it is needed for light rail and other transportation purposes, and indeed has been acquired by public authorities for such purposes and already is in public use, the City of course supports abandonment of Conrail's freight rail obligations in connection with the Hudson Street Industrial Track.

Harsimus Branch

The Harsimus Branch as described in your letter must be analyzed in two parts: one portion consists of right of way which had been at least partly developed for non-rail uses, and another portion which remains intact. In particular, the eastern end of the Harsimus Branch (east of Marin Boulevard) has been largely redeveloped into office, retail and residential uses. This redevelopment is part of general renewal of the City's waterfront, and has been transpiring for the past two decades. The Hudson Bergen Light Rail System in fact serves and fosters that redevelopment and intersects the Harsimus Branch. Indeed, sufficient space exists to connect the Harsimus Branch to the Light Rail System in downtown Jersey City.

To this end, we note that the Harsimus Branch right-of-way west of Marin Boulevard is completely undeveloped. It consists of six blocks of raised granite and brownstone trestle (referred to as "the Embankment") while the remainder is at grade right-of-way, portions of which contain concrete and stone stanchions, which once supported elevated railroad trestles. Although track, ties, and bridges have been removed, these could be restored for a grade-separated light rail system (also fully compatible with freight rail use) that could be extended through the Bergen Arches as an exceptionally desirable additional rail line serving the public.

The City expressed interest in acquisition of the Embankment, but was concerned that it could not use eminent domain procedures because the property remained a "line of railroad" regulated by a federal agency, the Surface Transportation Board (STB). Railroads may not abandon or sell lines of railroad without prior approval of the STB. Moreover, state and local governments may not employ their eminent domain remedies until STB has authorized abandonment. Notwithstanding City's interest, Conrail in 2006, without any abandonment authority from STB, purported to sell the Embankment and portions of the at grade right-of-way to a land developer for demolition and redevelopment as townhouses. This constituted an illegal abandonment and amounted among other things to a plan of anticipatory demolition in the event

someone was to force the railroad to seek the requisite authority. When negotiations between the developer and Conrail stalled, and the developer commenced demolition of structures, the City and others brought a declaratory proceeding at the Surface Transportation Board for a determination that the Embankment was part of a line of railroad for which the prior authorization of the Board was required for any abandonment or sale of the property. Conrail and the developer agreed to halt further demolition during the pendency of the proceeding.

Jersey City is deeply invested in our effort to preserve, protect and re-use the right-of-way provided by the Harsimus Branch. Its value as a transportation corridor cannot be underestimated. As explained in the paragraphs above regarding the Hudson Industrial Track right-of-way, the re-use of former rail lines for modern mass transit systems and city streets enables us to grow our city's economy, making New Jersey and the New York Metropolitan area richer and stronger. As I have noted, the current development of downtown Jersey City could not have been maintained without the Light Rail System which occupies portions of the old Hudson Street Industrial Track. If further development is to continue, additional transportation facilities must be added. Ironically, the plans presented to the City so far by Conrail's developer for the property not only would remove a transportation facility that can serve the downtown, but also add to traffic congestion in our already overtaxed streets. This generally would pose serious adverse environmental and traffic consequences over alternatives involving preservation of the rail corridor, intact.

We firmly believe that the re-use of the Harsimus Branch right-of-way as mass transit right-of-way is inextricably related to our city's ability to grow and prosper into the coming decades, and the public need for preserving the property for that purpose is so great that all parties and instrumentalities of government should regard it as inevitable.

We also believe that the re-use of the Harsimus Branch as a component of the East Coast Greenway bicycle-way is a highly desirable and feasible project of national proportions. Re-use of rail rights-of-way for bicycle trails is very common for abandoned rail lines in the suburbs, but city residents ride bikes, too. We have recently established bike lanes throughout Jersey City in an effort to make this form of transportation safer and more convenient. A grade separated bikeway on the Embankment is entirely possible, and even more so if there is a mass transit component as well.

We also envision the "Embankment" section of the Harsimus Branch as a pedestrian walkway. This is totally compatible with transit use. In fact, the two are mutually beneficial, as they make each other safer and more accessible. This is a reality in some of the world's great cities. The idea was born in Paris with Promenade Plantee established on an abandoned, elevated rail line. Its success has inspired New York City's High Line, the Bloomingdale Trail in Chicago, and the Reading Viaduct in Philadelphia. The economic growth along these routes is legendary. We seek similar returns for Jersey City.

The Harsimus Branch Embankment has been declared a Municipal Landmark by the Mayor and Council of Jersey City, and is so listed in the Jersey City Land Development Ordinance. Accordingly, any abandonment for development that required its removal would be inconsistent with existing land use plans.

The Harsimus Branch Embankment is on the New Jersey Register of Historic Sites and Places. As such, any abandonment will require their review and comment, as we expect Governor Corzine will inform you when his office responds to your correspondence.

The Embankment has also been determined eligible for listing on the National Register of Historic Places. It is bounded on the north and south by two National Historic Districts. Since spokesmen for Conrail have advised the City that Conrail is cooperating with the developer's plans either to demolish the Embankment for townhouses or to convert the Embankment into a parking garage with high rise residential towers on top, we are concerned that any abandonment by Conrail as matters stand will have serious and irretrievably adverse consequences not just to the City's interests in preserving the property for vital transportation (consistent with its historical uses), but also to the adjoining National Historic Districts, and quite possibly to individual structures within them.

The preservation of history and access is embodied in the segment of the Harsimus Branch west of Marin Boulevard. The six Embankment blocks provide rock solid evidence of the might of the Pennsylvania Railroad. The Embankment is a lesson to be learned about Jersey City's role as the railhead of our nation. The fact that the Hudson River waterfront was virtually 100 percent given over to rail yards for more than 100 years is lost to today's children, unless there is a visible remnant of its scale. Like the paleontologist's projections of the size of the beast from the scale of its femur, teachers can draw the same lesson from the Embankment. The fact that we can adaptively use this railroad right-of-way for essential transit and desirable recreational purposes makes this history lesson all the more reasonable and feasible.

These comments are only a sketch of our serious environmental, historic, land use and process concerns with Conrail's actions and inactions, and projected approach to STB, to date. We reserve the right to comment further at an appropriate time.

Since Conrail has indicated that it intends its abandonment effort to somehow validate its purported transfer of the Harsimus Branch to a developer, the City of Jersey City must and will request the Surface Transportation Board to deny such abandonment until and unless that transfer is invalidated, the railroad complies in a meaningful fashion with the requirements of section 106 of the National Historic Preservation Act and other applicable provisions of that statute, and the serious and adverse environmental consequences of the railroad's actions and inactions thoroughly analyzed, and other appropriate relief is awarded to the City. Given the serious adverse consequences flowing from Conrail's actions to date, and given the public controversy and unanswered questions, we also do not feel that this is an appropriate instance for the railroad to employ "notice of exemption" procedures as portended by STB docket number (I am told the "x" in that docket means Conrail intends to use exemption procedures).

Please be further advised that the City requests to be served promptly with all papers filed by the railroad with STB

Sincerely,



JERRAMIAH T. HEALY
MAYOR

Enclosure